

# HOUSE BILL 78

N1

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By: **Delegate Braveboy**

Introduced and read first time: January 17, 2012

Assigned to: Environmental Matters

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## A BILL ENTITLED

1 AN ACT concerning

2 **Condominiums and Homeowners Associations – Payments Under Protest**

3 FOR the purpose of authorizing a condominium unit owner or a lot owner in a certain  
4 development to make a certain payment under protest by giving a certain  
5 written notice at the time of payment; establishing that a unit owner or lot  
6 owner reserves the right to dispute a charge that is paid under protest; and  
7 generally relating to payments under protest to condominium councils of unit  
8 owners and homeowners associations.

9 BY renumbering

10 Article – Real Property  
11 Section 11B–117 and 11B–118, respectively  
12 to be Section 11B–118 and 11B–119, respectively  
13 Annotated Code of Maryland  
14 (2010 Replacement Volume and 2011 Supplement)

15 BY repealing and reenacting, with amendments,

16 Article – Real Property  
17 Section 11–110  
18 Annotated Code of Maryland  
19 (2010 Replacement Volume and 2011 Supplement)

20 BY adding to

21 Article – Real Property  
22 Section 11B–117  
23 Annotated Code of Maryland  
24 (2010 Replacement Volume and 2011 Supplement)

25 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF  
26 MARYLAND, That Section(s) 11B–117 and 11B–118, respectively, of Article – Real

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 Property of the Annotated Code of Maryland be renumbered to be Section(s)  
2 11B-118 and 11B-119, respectively.

3 SECTION 2. AND BE IT FURTHER ENACTED, That the Laws of Maryland  
4 read as follows:

5 **Article – Real Property**

6 11-110.

7 (a) All common profits shall be disbursed to the unit owners, be credited to  
8 their assessments for common expenses in proportion to their percentage interests in  
9 common profits and common expenses, or be used for any other purpose as the council  
10 of unit owners decides.

11 (b) (1) Funds for the payment of current common expenses and for the  
12 creation of reserves for the payment of future common expenses shall be obtained by  
13 assessments against the unit owners in proportion to their percentage interests in  
14 common expenses and common profits.

15 (2) (i) Where provided in the declaration or the bylaws, charges for  
16 utility services may be assessed and collected on the basis of usage rather than on the  
17 basis of percentage interests.

18 (ii) If provided by the declaration, assessments for expenses  
19 related to maintenance of the limited common elements may be charged to the unit  
20 owner or owners who are given the exclusive right to use the limited common  
21 elements.

22 (iii) Assessments for charges under this paragraph may be  
23 enforced in the same manner as assessments for common expenses.

24 (c) A unit owner shall be liable for all assessments, or installments thereof,  
25 coming due while he is the owner of a unit. In a voluntary grant the grantee shall be  
26 jointly and severally liable with the grantor for all unpaid assessments against the  
27 grantor for his share of the common expenses up to the time of the voluntary grant for  
28 which a statement of lien is recorded, without prejudice to the rights of the grantee to  
29 recover from the grantor the amounts paid by the grantee for such assessments.  
30 Liability for assessments may not be avoided by waiver of the use or enjoyment of any  
31 common element or by abandonment of the unit for which the assessments are made.

32 **(D) (1) A UNIT OWNER MAY PAY UNDER PROTEST ANY ASSESSMENT**  
33 **OR OTHER CHARGE OWED TO THE COUNCIL OF UNIT OWNERS BY GIVING**  
34 **WRITTEN NOTICE AT THE TIME OF PAYMENT THAT:**

35 **(I) THE PAYMENT IS BEING MADE UNDER PROTEST; AND**

1                   **(II) STATES THE BASIS ON WHICH THE UNIT OWNER**  
2 **DISPUTES THE CHARGE.**

3                   **(2) BY MAKING A PAYMENT UNDER PROTEST UNDER PARAGRAPH**  
4 **(1) OF THIS SUBSECTION, THE UNIT OWNER RESERVES THE RIGHT TO CONTEST**  
5 **THE DISPUTED CHARGE.**

6           **[(d)] (E)** (1) Payment of assessments, together with interest, late  
7 charges, if any, costs of collection and reasonable attorney's fees may be enforced by  
8 the imposition of a lien on a unit in accordance with the provisions of the Maryland  
9 Contract Lien Act.

10           (2) Suit for any deficiency following foreclosure may be maintained in  
11 the same proceeding, and suit to recover any money judgment for unpaid assessments  
12 may also be maintained in the same proceeding, without waiving the right to seek to  
13 impose a lien under the Maryland Contract Lien Act.

14           **[(e)] (F)** (1) Any assessment, or installment thereof, not paid when due  
15 shall bear interest, at the option of the council of unit owners, from the date when due  
16 until paid at the rate provided in the bylaws, not exceeding 18 percent per annum, and  
17 if no rate is provided, then at 18 percent per annum.

18           (2) The bylaws also may provide for a late charge of \$15 or one tenth  
19 of the total amount of any delinquent assessment or installment, whichever is greater,  
20 provided the charge may not be imposed more than once for the same delinquent  
21 payment and may only be imposed if the delinquency has continued for at least 15  
22 calendar days.

23           (3) If the declaration or bylaws provide for an annual assessment  
24 payable in regular installments, the declaration or bylaws may further provide that if  
25 a unit owner fails to pay an installment when due, the council of unit owners may  
26 demand payment of the remaining annual assessment coming due within that fiscal  
27 year. A demand by the council is not enforceable unless the council, within 15 days of a  
28 unit owner's failure to pay an installment, notifies the unit owner that if the unit  
29 owner fails to pay the monthly installment within 15 days of the notice, full payment  
30 of the remaining annual assessment will then be due and shall constitute a lien on the  
31 unit as provided in this section.

32           **[(f)] (G)** (1) This subsection does not limit or affect the priority of any  
33 lien, secured interest, or other encumbrance with priority that is held by or for the  
34 benefit of, purchased by, assigned to, or securing any indebtedness to:

35                   (i) The State or any county or municipal corporation in the  
36 State;

1 (ii) Any unit of State government or the government of any  
2 county or municipal corporation in the State; or

3 (iii) An instrumentality of the State or any county or municipal  
4 corporation in the State.

5 (2) In the case of a foreclosure of a mortgage or deed of trust on a unit  
6 in a condominium, a portion of the condominium's liens on the unit, as prescribed in  
7 paragraph (3) of this subsection, shall have priority over a claim of the holder of a first  
8 mortgage or a first deed of trust that is recorded against the unit on or after October 1,  
9 2011.

10 (3) The portion of the condominium's liens that has priority under  
11 paragraph (2) of this subsection:

12 (i) Shall consist solely of not more than 4 months, or the  
13 equivalent of 4 months, of unpaid regular assessments for common expenses that are  
14 levied by the condominium in accordance with the requirements of the declaration or  
15 bylaws of the condominium;

16 (ii) May not include:

17 1. Interest;

18 2. Costs of collection;

19 3. Late charges;

20 4. Fines;

21 5. Attorney's fees;

22 6. Special assessments; or

23 7. Any other costs or sums due under the declaration or  
24 bylaws of the condominium or as provided under any contract, law, or court order; and

25 (iii) May not exceed a maximum of \$1,200.

26 (4) (i) Subject to subparagraph (ii) of this paragraph, at the  
27 request of the holder of a first mortgage or first deed of trust on a unit in a  
28 condominium, the governing body shall provide to the holder written information  
29 about the portion of any lien filed under the Maryland Contract Lien Act that has  
30 priority as prescribed under paragraph (3) of this subsection, including information  
31 that is sufficient to allow the holder to determine the basis for the portion of the lien  
32 that has priority.

1                   (ii) At the time of making a request under subparagraph (i) of  
2 this paragraph, the holder shall provide the governing body of the condominium with  
3 the written contact information of the holder.

4                   (iii) If the governing body of the condominium fails to provide  
5 written information to the holder under subparagraph (i) of this paragraph within 30  
6 days after the filing of the statement of lien among the land records of each county in  
7 which the condominium is located, the portion of the condominium's liens does not  
8 have priority as prescribed under paragraph (2) of this subsection.

9 **11B-117.**

10           **(A) A LOT OWNER MAY PAY UNDER PROTEST ANY FEE, ASSESSMENT, OR**  
11 **OTHER CHARGE OWED TO THE HOMEOWNERS ASSOCIATION BY GIVING WRITTEN**  
12 **NOTICE AT THE TIME OF PAYMENT THAT:**

13                   **(1) THE PAYMENT IS BEING MADE UNDER PROTEST; AND**

14                   **(2) STATES THE BASIS ON WHICH THE LOT OWNER DISPUTES THE**  
15 **CHARGE.**

16           **(B) BY MAKING A PAYMENT UNDER PROTEST UNDER SUBSECTION (A)**  
17 **OF THIS SECTION, THE LOT OWNER RESERVES THE RIGHT TO CONTEST THE**  
18 **DISPUTED CHARGE.**

19           SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect  
20 October 1, 2012.